

1 MICHAEL J. PANGIA, ESQ.  
2 D.C. Bar No. 967182  
(Will comply with LCR IA 10-2 by Jan. 26, 2016)  
3 **THE PANGIA LAW GROUP**  
1717 N St NW, Suite 300  
Washington, D.C. 20036  
4 T: (202) 955-6153  
F: (202) 393-1725  
5 mpangia@pangialaw.com

6 **THE URBAN LAW FIRM**  
MICHAEL A. URBAN, Nevada Bar No. 3875  
7 SEAN W. McDONALD, Nevada Bar No. 12817  
4270 S. Decatur Blvd., Suite A-9  
8 Las Vegas, Nevada 89103  
T: (702) 968-8087  
9 F: (702) 968-8088  
murban@theurbanlawfirm.com  
10 smcdonald@theurbanlawfirm.com  
*Counsel for Plaintiff*

11  
12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 JASON KINZER, an individual;

15 Plaintiff,

16 vs.

17 ALLEGIANT AIR, LLC, a Nevada limited  
liability company; and ALLEGIANT TRAVEL  
18 CO. a Nevada corporation,

19 Defendants.  
20

Case No.: 2:15-cv-02306-JAD-PAL

**MOTION TO REMAND  
TO STATE COURT**

21 Plaintiff, JASON KINZER, moves for an Order remanding the present action to the state  
22 court, the Eighth Judicial District Court in Clark County, Nevada. As no original federal  
23 jurisdiction exists for this matter, the case must be remanded to the state district court for Clark  
24 County, Nevada. In support of his Motion to Remand, Plaintiff states as follows:

25 **I. FACTUAL AND PROCEDURAL BACKGROUND**

26 On June 8, 2015, Captain Jason Kinzer was piloting Allegiant Air Flight 864 from St.  
27 Petersburg, Florida to Hagerstown, Maryland. Compl., Doc. 1 at 12. On June 8, 2015, shortly  
28 after take-off from St. Petersburg, Florida, with one hundred and forty-one passengers aboard,

1 the flight attendants reported to him that a pungent smoke from an unknown source was  
 2 emanating from somewhere in the rear of the passenger cabin. Doc. 1 at 12. He immediately  
 3 returned to St. Petersburg to make an emergency landing. Doc. 1 at 12–13. After landing, the St.  
 4 Petersburg Airport Crash and Rescue personnel advised him that smoke was emanating from the  
 5 No. 1 engine and that it should be immediately shut down. Doc. 1 at 12–13. Since the smoke in  
 6 the passenger cabin did not abate and for the safety of his passengers, with the concurrence of his  
 7 second-in-command pilot, he ordered an evacuation of the passengers. Doc. 1 at 12–13. On July  
 8 23, 2015, Allegiant terminated Captain Kinzer’s employment because of the decision to  
 9 evacuate. Doc. 1 at 31. Allegiant never told Capt. Kinzer what was causing the smoke in the  
 10 passenger cabin, and that in retrospect the aircraft had no problem, rendering the evacuation  
 11 unnecessary. Doc. 1 at 31. He was admonished that before ordering evacuation he should have  
 12 first taken into consideration the “Company assets” and rescheduling costs before making such  
 13 decisions. Doc. 1 at 31.

14 On November 13, 2015, Plaintiff, Captain Jason Kinzer, a citizen of the State of Florida,  
 15 initiated a lawsuit against Defendants Allegiant Air, LLC and Allegiant Travel Co., both citizens  
 16 of Nevada in the state district court for Clark County, Nevada. Doc. 1 at 9. Plaintiff’s complaint  
 17 asserted solely state law claims of wrongful and tortious termination of employment, defamation,  
 18 intentional infliction of emotional distress, and punitive damages. Doc. 1 at 9–18 On December  
 19 7, 2015, Defendants removed this case to the United States District Court for the District of  
 20 Nevada, purporting both diversity and federal question jurisdiction. Doc. 1 at 1–3.

## 21 **II. LAW AND ARGUMENT**

22 There is absolutely no support for this removal. Plaintiff asserts that removal is  
 23 improper because the Court does not have subject matter jurisdiction over this case on either  
 24 federal question grounds or diversity. Each potential source of Federal jurisdiction will be  
 25 discussed in turn.

### 26 **A. Diversity Jurisdiction**

27 Defendants Allegiant Air, LLC and Allegiant Travel Co. are statutorily barred from  
 28 removing the case at bar based on diversity of citizenship. The removal of civil actions based on

1 diversity is governed by 28 U.S.C. § 1441(b). Section 1441(b) provides that a civil action  
 2 otherwise removable on the basis of diversity “may not be removed if any of the parties in  
 3 interest properly joined and served as defendants is a citizen of the State in which the action is  
 4 brought.” Since Defendants are citizens of Nevada, the forum state, the case cannot be removed  
 5 to the Federal District Court of Nevada on diversity grounds.

#### 6 **B. Federal Question Jurisdiction**

7 Plaintiff Jason Kinzer has pleaded only state law claims and thus no federal question  
 8 jurisdiction exists in this case. Removal based on federal question jurisdiction is governed by 28  
 9 U.S.C. § 1441(a). The party seeking to remove the case bears the burden of establishing the  
 10 existence of federal question jurisdiction. *See Cal. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831,  
 11 838 (9th Cir. 2004), *cert denied*, 544 U.S. 974 (2005); *see also Gaus v. Miles, Inc.*, 980 F.2d 564,  
 12 566 (9th Cir. 1992) (“The strong presumption against removal jurisdiction means that the  
 13 defendant always has the burden of establishing that removal is proper.”) (internal quotation  
 14 marks omitted); *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (per  
 15 curiam) (noting the “longstanding, near-canonical rule that the burden on removal rests with the  
 16 removing defendant”). Section 1441 is strictly construed against removal and courts resolve any  
 17 doubts about the propriety of removal in favor of remanding the case to state court. *See Durham*  
 18 *v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006). If there is any doubt regarding  
 19 the existence of subject matter jurisdiction, the court must resolve those doubts in favor of  
 20 remanding the action to state court. *See Gaus*, 980 F.2d at 566 (“Federal jurisdiction must be  
 21 rejected if there is any doubt as to the right of removal in the first instance.”).

22 The presence or absence of federal question jurisdiction is governed by the “well-pleaded  
 23 complaint rule,” which provides that federal jurisdiction exists only when a federal question is  
 24 presented on the face of the plaintiff’s properly pleaded complaint. *See Caterpillar Inc. v.*  
 25 *Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule, the district courts  
 26 do not have original jurisdiction unless the federal issue appears on the face of the well-pleaded  
 27 complaint; thus, there can be no removal jurisdiction in a case where there is no federal question.  
 28 *Id.*

1           One exception to the well-pleaded complaint rule is that Congress may so completely  
 2 preempt a particular area that any civil complaint raising certain claims is necessarily federal in  
 3 character. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63–64 (1987). This “complete  
 4 preemption doctrine” is an “independent corollary” to the well-pleaded complaint rule.  
 5 *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1107 (9th Cir. 2000). It arises  
 6 only where “the preemptive force of a statute is so ‘extraordinary’ that it ‘converts an ordinary  
 7 state common-law complaint into one stating a federal claim for the purposes of the well-pleaded  
 8 complaint rule.’” *Metro. Life Ins. Co.*, 481 U.S. at 65. If complete preemption does not exist,  
 9 the district court is without subject matter jurisdiction even if a defendant has a federal defense,  
 10 including one of preemption. *Marin Gen. Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d  
 11 941 (9th Cir. 2009).

12           The complete preemption doctrine is very narrow, and the Supreme Court has only  
 13 identified three categories where complete preemption exists: certain causes of action arising out  
 14 of the Labor Management Relations Act (“LMRA”), Employee Retirement Income Security Act  
 15 (“ERISA”), and National Bank Act. *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1245  
 16 (9th Cir. 2009). Importantly, neither the Supreme Court nor the Ninth Circuit has found that the  
 17 Federal Aviation Act provides an exclusive federal cause of action. *Webb v. Desert Bermuda*  
 18 *Dev. Co.*, 518 Fed. App’x 521, 522 (9th Cir. 2013). In such cases, the complete preemption  
 19 doctrine is inapplicable and there is no basis for removal. *Id.*

20           Finally, even where federal law generally establishes applicable standards of care in the  
 21 field of aviation safety with ordinary preemption, and not preemption for removal purposes, the  
 22 Ninth Circuit has held that “Congress has not occupied the field of employment law in the  
 23 aviation context and that the FAA does not confer upon the agency the exclusive power to  
 24 regulate all employment matters involving airmen.” *Ventress v. Japan Airlines*, 747 F.3d 716,  
 25 721 (9th Cir. 2014). Whether or not claims that involve federal regulatory standards of care are  
 26 subject to ordinary preemption is a matter left for adjudication by a state trial judge. *See Vorhees*  
 27 *v. Naper Aero Club, Inc.*, 272 F.3d 398, 405 (7th Cir. 2001); *Brown v. City & Cty. of Honolulu*,  
 28 No. 14-00354 HG-KSC, 2015 WL 1564942, at \*5 (D. Haw. Feb. 26, 2015).

1 In the present case, Plaintiff Jason Kinzer has only alleged state causes of action on the  
 2 face of his complaint. Plaintiff's state causes of action are based on wrongful termination in  
 3 violation of Nevada public policy and defamation. While federal regulations have been  
 4 referenced in the complaint, it has only been used to reference the public policy interests that  
 5 Nevada recognizes as part of its state law wrongful termination claim. Congress has not  
 6 preempted the field of state employment law—and the mere reference to federal statutes or  
 7 regulations does not invoke federal question jurisdiction in either the context of defamation or  
 8 wrongful termination. Thus, since there is no complete preemption, the well-pleaded  
 9 complaint rule must govern and Plaintiff's motion to remand should be granted.

### 10 **III. CONCLUSION**

11 For the forgoing reasons, this Court lacks subject matter jurisdiction over this case. The  
 12 matter must be remanded to the state court where it was originally filed.

13 Dated this 11th day of December, 2015.

14 MICHAEL J. PANGIA, ESQ.  
 15 D.C. Bar No. 967182  
 (Will comply with LCR IA 10-2 by Jan. 26, 2016)  
 16 **THE PANGIA LAW GROUP**  
 17 1717 N St NW, Suite 300  
 Washington, D.C. 20036  
 T: (202) 955-6153  
 18 F: (202) 393-1725  
 mpangia@pangialaw.com

### 19 **THE URBAN LAW FIRM**

20  
 21 By: /s/ Sean W. McDonald  
 22 MICHAEL A. URBAN, Nevada Bar No. 3875  
 SEAN W. McDONALD, Nevada Bar No. 12817  
 23 4270 S. Decatur Blvd., Suite A-9  
 Las Vegas, Nevada 89103  
 24 T: (702) 968-8087  
 F: (702) 968-8088  
 25 murban@theurbanlawfirm.com  
 smcdonald@theurbanlawfirm.com

26 ***Counsel for Plaintiff***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of December, 2015, I electronically filed the foregoing **MOTION TO REMAND TO STATE COURT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Michael A Urban murban@theurbanlawfirm.com, RSchleiker@theurbanlawfirm.com, adenni@theurbanlawfirm.com, kopenbrier@theurbanlawfirm.com, nring@theurbanlawfirm.com, pcotsonis@theurbanlawfirm.com, smcdonald@theurbanlawfirm.com, vhernquist@theurbanlawfirm.com

Veronica Arechederra-Hall veronica.hall@jacksonlewis.com, LasVegasDocketing@JacksonLewis.com, janine.martin@jacksonlewis.com, karen.michelini@jacksonlewis.com

Steven C Anderson steven.anderson@jacksonlewis.com, christar@jacksonlewis.com, karen.michelini@jacksonlewis.com, lasvegasdocketing@jacksonlewis.com, santiagoe@jacksonlewis.com

Sean W. McDonald smcdonald@theurbanlawfirm.com, efiling@theurbanlawfirm.com

and I hereby certify that have mailed by United States Postal Service the document to the following non-CM/ECF participants:

[none]

/s/ Sean W. McDonald  
An Employee of The Urban Law Firm

62513